

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: WINCHESTER CARRIAGE, INCORPORATED dba MONARCH ENTERPRISES, INC. Jasper County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2015-AFO-06
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TO: Winchester Carriage, Incorporated
Quentin R. Boyken, Registered Agent
666 Walnut Street, Suite 2000
Des Moines, Iowa 50309

Keith Roorda
Monarch Enterprises, Inc.
P.O. Box 720
Monroe, Iowa 50170

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Winchester Carriage, Incorporated (Winchester) dba Monarch Enterprises, Inc. (Monarch) for the purpose of resolving manure application violations. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements: **Relating to legal requirements:**

Bill Gibbons, Field Office 5
Iowa Department of Natural Resources
7900 Hickman Road, Suite 200
Windsor Heights, Iowa 50324
Phone: 515/725-0268

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/725-9572

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459 and the rules adopted or permits

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issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Swine Valley Nursery is an animal feeding operation located at 9928 Hwy. S6G, Prairie City, Iowa (SW ¼ of NW ¼ of Section 13, Des Moines Township, Jasper County). The facility consists of two swine nursery confinement buildings with a total of 9,000 animals (900 animal units). Manure for the facility is stored in a two-cell anaerobic lagoon. Each of the buildings has shallow pits that flush by gravity to the lagoon. There is a cross over pipe with a gate valve between the primary cell and secondary cell which when left open maintains two feet of freeboard in the primary cell. The secondary cell is within 60 to 100 feet of a creek to the east and on the east side of the creek are fields where Swine Valley Nursery irrigates liquid manure from the secondary cell. The Jasper County Assessor's Office lists Winchester as the owner of the confinement buildings. The manure management plan lists Monarch as the owner of the facility. However, the Iowa Secretary of State lists Monarch as an inactive corporation in the state of Iowa.

2. On August 26, 2014, DNR Field Office 5 received a complaint stating on August 22 and August 23, Swine Valley Nursery was applying manure from a lagoon with a spray gun and was spraying manure over the creek to reach the field on the other side.

3. On August 27, 2014, Bill Gibbons, DNR Field Office 5 environmental specialist, investigated the complaint. Mr. Gibbons met with Sam Stravers, an employee at Swine Valley Nursery. Mr. Stravers explained there was a tractor and pump at the lower lagoon cell with an umbilical hose connected to the pump that crossed the creek about 60 to 100 feet east of the lagoon. The umbilical hose was connected to a spray gun pulled by a tractor in a soybean field on the east side of the creek. Mr. Stravers stated he was the person who set up and ran the irrigation equipment. The field had two grassed pathways, approximately 10 feet wide, running parallel to the creek where the tractor could pull the spray gun to irrigate the field. Mr. Gibbons noted the tractor and spray gun were on the grassed path closest to the creek, approximately 200 feet from the creek. There were soybeans planted between the creek and the grassed waterway within 20 to 30 feet of the creek. Mr. Stravers said that he had already sprayed manure on the beans. He stated he sprayed right up to the grassed buffer. Mr. Gibbons explained that when applying liquid manure onto the ground surface without incorporating within 24 hours the separation distance from a water source was 200 feet. Mr. Gibbons noted a residence and asked Mr. Stravers how close he sprayed to the residence. Mr. Stravers showed him how close he applied to the residence and Mr. Gibbons measured the distance to be approximately 600 feet. Mr. Gibbons explained that the

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separation distance from a residence was 750 feet. During the conversation, Mr. Stravers also stated that his confinement site manure application certification had expired. Mr. Stravers informed Mr. Gibbons that the facility irrigates out of the lower lagoon cell every year onto the crop field across the creek. He stated that most of the solids settle in the upper lagoon cell and the lower lagoon cell is used to maintain freeboard in the upper lagoon cell. The manure management plan on file with DNR Field Office 5 for the facility did not include manure application by spray irrigation and the only crop rotation in the manure management plan was corn/corn.

4. On September 8, 2014, DNR issued a Notice of Violation letter to Monarch for the land application and applicator certification violations discovered by DNR Field Office 5 on August 27, 2014. The letter informed the facility that the violations were being referred for further enforcement.

5. On September 10, 2014, Mr. Stravers completed his confinement site manure application certification.

6. On September 11, 2014, Mr. Gibbons conducted an Animal Feeding Operations Compliance Inspection, which included a manure management plan inspection at the facility. Mr. Gibbons met with Brian Ritland, the facility's consultant, and Mark Hendricks, the facility's manager. Mr. Ritland provided the facility's most recent manure management plan that included irrigation as a means of land application for the fields in the questions. He also provided land application records for those fields. Mr. Gibbons also explained the manure application separation distance requirements and the violations of those requirements. Mr. Hendricks stated at one time there was a wide vegetation strip planted as a buffer but over the years the buffer had been encroached on by farming.

7. On October 24, 2014, Mr. Gibbons conducted an Animal Feeding Operations Compliance Inspection, which included a manure management plan inspection at another Monarch owned and operated facility, Hog Haven Nursery. The land application records indicated that Mr. Stravers had done manure application for the period reviewed (five years) and had not been certified since March 1, 2011.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC Chapter 65.

2. 567 IAC 65.3(3)"a" states the required separation distance for liquid manure from a confinement feeding operation from a residence not owned by the

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titleholder, a business, a church, a school or a public use area is 750 feet. The separation distance for application of manure by spray irrigation equipment shall be measured from the actual wetted perimeter and the closest point of the residence, business, church, school or public use area. During the investigation on August 27, 2014, DNR Field Office 5 personnel determined that Mr. Stravers, a Monarch employee, had not complied with the separation distance requirement from a nearby residence. The above-mentioned facts indicate a violation of this provision.

3. 567 IAC 65.3(3)"g" states a person shall not apply manure on land within 200 feet from a designated area unless one of the following applies: 1) the manure is land-applied by injection or incorporation on the same date and the manure was land-applied or 2) an area of permanent vegetation cover exists for 50 feet surrounding the designated area. 567 IAC 65.1 defines designated area as a known sinkhole, abandoned well, unplugged agricultural drainage well, agricultural drainage well cistern, agricultural drainage well surface tile inlet, drinking water well, designated wetland, or water source. During the investigation on August 27, 2014, DNR Field Office 5 personnel determined that Mr. Stravers, a Monarch employee, had not complied with the separation distance requirement from a water source. The above-mentioned facts indicate a violation of this provision.

4. 567 IAC 65.3(6) requires a confinement feeding operation that is required to submit a manure management plan that applies its own manure must comply with certification requirements in rule 567 IAC 65.19 pertaining to confinement site manure applicators. 567 IAC 65.19 states a confinement site manure applicator shall not apply dry or liquid manure to land unless the person is certified. During the investigation on August 27, 2014, DNR Field Office 5 personnel discovered that Mr. Stravers was not properly certified to be applying manure. During an inspection at another Monarch facility it was determined that Mr. Stravers had been applying manure without certification since March 1, 2011. The above-mentioned facts indicate violations of this provision.

V. ORDER

THEREFORE, the DNR orders and Winchester dba Monarch agrees to do the following:

1. Winchester dba Monarch shall ensure that all employees who handle, transport or apply manure are properly certified;
2. Winchester dba Monarch shall ensure that all employees who apply manure meet all separation distance requirements when surface applying liquid manure; and

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3. Winchester dba Monarch shall pay an administrative penalty in the amount of \$3,125.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$3,125.00. The administrative penalty is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” Winchester dba Monarch gained an economic benefit by not using a certified applicator to land apply the manure. Winchester dba Monarch has been able to delay the expenses associated with manure application certification for its employees. Additionally, Winchester dba Monarch gained an economic benefit by not following the separation distance requirements in the spray application of the manure. The facility was able to spray apply the manure to empty the lagoon without needing to transport the manure to another field or finding another method for removal and application of the manure. It is estimated Winchester dba Monarch has recognized an economic benefit of at least \$125.00 and that amount is being assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The potential for a water quality violation resulted from the application separation distance requirements not being followed. Separation distance requirements are established to ensure the protection of personal property and

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natural resources. For a period of at least three years Winchester dba Monarch has used an uncertified manure applicator. These violations threaten the integrity of the water quality program. Therefore, \$1,500.00 is assessed for this factor.

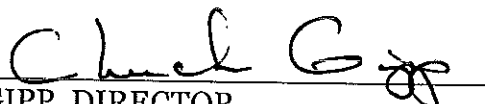
Culpability – Winchester dba Monarch has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. For a period of at least three years Winchester dba Monarch has used an uncertified manure applicator. Mr. Stravers had previously been certified and was aware of the certification requirements. Therefore, \$1,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS


This administrative consent order is entered into knowingly and with the consent of Winchester dba Monarch. For that reason Winchester dba Monarch waives the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.


CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 22nd day of
March, 2015.


Winchester Carriage, Incorporated

Dated this 9 day of
March, 2015.

Kelli Book, Field Office #5, EPA, VIII.D.2.b, VIII.D.4